

DUNCAN MILLER

IBLA 74-251

Decided August 21, 1974

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas leases M-17387 and M-17390 terminated by operation of law for failure to pay the annual rental on or prior to the anniversary date.

Affirmed.

1. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals – Oil and Gas Leases: Termination

Where the owner of a lease terminated for failure to pay the advance annual rental timely does not pay or tender the rental within 20 days of the due date, the Department of the Interior is not authorized to reinstate the lease pursuant to 30 U.S.C. @ 188(c) (1970).

2. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals – Oil and Gas Leases: Termination

A check which a bank has refused to honor is not a tender or payment of the annual rental under 30 U.S.C. @ 188(c) (1970), unless the refusal to honor the check was the result of a bank error, and a bank official corroborates the error.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On February 27, 1974, the Montana State Office, Bureau of Land Management (BLM), refused to accept Duncan Miller's "substitute" annual

rental check received February 25, 1974, for leases M-17387 and M-17390 or to reinstate the leases. The decision stated that the leases had terminated automatically by operation of law on February 1, 1974 (Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970)), and could not be reinstated since the rental was not paid or tendered within 20 days after the lease termination date. (Act of May 12, 1970, 84 Stat. 206, amending, section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(c) (1970)). A check submitted by Miller to pay the annual rental, received by BLM on January 30, 1974, was returned as uncollectible by the Valley Bank of Nevada for the reason it carried a "stale date." (The check was dated January 25, 1972, instead of January 2, 1974). Miller filed a "Second Petition for Reinstatement" with BLM which indicated that the bank failed to comply with his instructions to ignore any errors in checks to BLM. On March 22, 1974, BLM restated that there was no authority to reinstate Miller's leases. ^{1/}

Miller now asserts that he did "tender the rental within twenty days after the termination date," that is, as soon as he got word concerning the inadvertent error in the check."

There was no valid tender or payment of the rental within the time required to reinstate the lease. The Act of May 12, 1970, 84 Stat. 206, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(c) (1970), permits reinstatement of a terminated oil and gas lease only if the required rental was paid or tendered within the twenty day period after the anniversary date of the lease. John Oakason, 13 IBLA 80, 82 (1973); James S. Guleke, 9 IBLA 73, 76 (1973). Miller's substitute check received February 25, 1974, 25 days after the anniversary date of February 1, 1974, is not a payment or tender made within 20 days of the anniversary date.

Unless Miller's annual check which was received prior to the anniversary date is a tender or payment within the meaning of 30 U.S.C.

§ 188(c) (1970), his lease must be deemed terminated by operation of law and it cannot be reinstated. A check which a bank has refused to honor is not a tender or payment of the annual rental unless the refusal to honor the check was the result of a bank error. John Oakason, *supra*; James S. Guleke, *supra*. A mere allegation that

^{1/} The terminated leases were placed in a simultaneous drawing for March 1974. Miller requested that the leases be deleted from the drawing pending his appeal. BLM rejected this request, held the drawing, but did not issue the leases pending the outcome of this appeal.

a bank has erroneously refused to honor a check, uncorroborated by an admission of mistake by the bank, is not sufficient to show that the bank has made an error, and the dishonored check cannot be considered to be a tender of rental under 30 U.S.C. § 188(c) (1970). George E. Conley, 9 IBLA 302, 303 (1973); James S. Guleke, *supra* at 76; *see* Duncan Miller, 10 IBLA 27 (1973); Duncan Miller, 7 IBLA 343 (1972); Duncan Miller, 70 I.D. 113 (1963). An improper dishonoring of a check by a bank corroborated by a bank official shall be deemed a justifiable failure to pay annual rental so long as the payment was otherwise correct. Id.

The stale date on the check was not an error of the bank. Although Miller asserts he has instructed the bank to ignore his errors on BLM checks, a bank official has not corroborated Miller's allegation of error.

We hold that Miller has not made a tender or payment of the annual rental as required to prevent termination of the lease, or as required within twenty days of the anniversary date of the leases to permit reinstatement of the leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

